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In the

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-743

ROBERT H. HIEGER
and
ROBERT H. ELLIOTT,
Petitioners,

vs.

FORD MOTOR COMPANY,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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Opinions Below

The decision of the United States Court of Appeals for the Sixth Circuit to which the Petition for a Writ of Certiorari is directed is reported at 516 F. 2d 1324. This decision was handed down on June 3, 1975 and is reprinted in the Appendix. Plaintiffs' petition for rehearing was denied July 24, 1975. The Findings of Fact and Conclusions of Law entered by the District Court are also reprinted in the Appendix.

Jurisdiction

Petitioners erroneously cite Sections 1338(a) and 1400(b) of Title 28 of the Judicial Code and Section 282 of Title 35 of the United States Code as the statutory provisions conferring jurisdiction on this Court to review the above decision. Jurisdiction of this Court may be invoked in this case under 28 U.S.C. Sec. 1254(1) and Rule 19 of the Rules of the Supreme Court of the United States.

Questions Presented For Review

The petition fails to set forth questions presented for review nor are questions identifiable or comprised in the petition as required by Rule 23(1)(c) of this Court. The petition merely alleges errors in the Court of Appeals decision but does not translate those errors into questions presented for review.

Statement Of The Case

On the issue of validity of the patent, the District Court concluded:

> "3. Based on the presumption of validity, the patent is valid". (District Court Findings and Conclusion, p. 18)*

On appeal, the Court of Appeals vacated the adjudication of validity (Court of Appeals Opinion, pp. 3-5) because the District Court had not made a full inquiry and adequate findings of fact on the issue of validity, citing *Graham* v. *John Deere Co.*, 383 U.S. 1, 17 (1966) and

* The Appendix pages accompanying the Petition are not numbered consecutively with A numbers as required by the rules of this Court. We designate here the name of the document and its page number.

Sinclair & Carroll Co. v. *Interchemical Corp.*, 325 U.S. 327, 330 (1945). Thus, the issue of validity of the patent was left unadjudicated and in the same status as if this litigation had never been filed (Court of Appeals Opinion, pp. 3 and 5).

In affirming the District Court's holding of non-infringement, the Court of Appeals referred to the District Court's detailed findings of fact and stated:

> "Our review of the record convinces us that these findings are not clearly erroneous, Fed. R. Cir. P. 52(a), but to the contrary are supported by substantial evidence". (Court of Appeals Opinion, p. 3)

This affirmance of the holding of non-infringement supported dismissal of the action and obviated the necessity of a remand for further consideration of the issue of validity of the patent.

ARGUMENT

The petition for writ of certiorari should be denied for the obvious reason that petitioners have totally failed to present a single question or consideration deserving of review by this Court. The petition presents no special or important reasons for its grant as required by Rule 19 of this Court nor does it frame any "questions presented for review" as required by Rule 23(1)(c). The petition merely states in general terms that the District Court and Court of Appeals decisions "conflict with other decisions in the Sixth Circuit and in other circuits, as well as decisions of the Supreme Court" (Pet. 2) without pointing out what that conflict actually is. The petition further charges departure by the Court of Appeals and District Court from the usual and accepted course of judicial proceedings but again such departure is not specified. The petitioners fail to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration herein (Rule 23(4)).

In brief, the petition seeks a further appeal on the merits. It constitutes no more than a request that this Court review the facts, details and evidence underlying the holding of non-infringement and it proposes that this Court undertake to consider the issue of validity on the merits without any supporting fact findings by the District Court and without any holding as to validity one way or the other by the Court of Appeals. Affirmance of the District Court's holding of non-infringement by the Court of Appeals completely disposes of the case and renders moot any inquiry into the patent validity issue.

CONCLUSION

Since petitioners have failed to present any question worthy of review by this Court, it is respectfully submitted that the Petition For A Writ of Certiorari should be denied.

Respectfully submitted,

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